(1)
C/ 401
(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

SINGLE BENCH

Second Appeal No. 269 Of 2005

APPELLANT:
PLAINTIFF

Mem Lal S/o Kripa Ram
by caste Kalar, aged about 55
Years, R/o Village Nara, Tahsil
Kanker, District Kanker (CG).

V E R S U S

RESPONDENTS :
DEFENDANTS

1. Nohru S/o Kripa Ram, by caste Kalar, Aged about 48 years, R/o Village Nara, Tahsil Kanker Dist. Bastar (C.G.)

2. Rameshwari D/o Kripa Ram by caste Kalar, aged 40 years, resident of village Tansi, Tahsil Charama, District Kanker (CG).

3. Dhiru S/o Kriparam by caste Kalar, aged 45 years, Malaria Supervisor, resident of Village Sarwandi, Tahsil Kanker District Kanker (CG).

4. State of Chhattisgarh, Through Collector Kanker, Dist. Kanker (C.G.)

5. Radheshyam S/o Sita Ram Brahmin, aged 55 years, agriculturist, resident of Village Nara, post Banodar,Tahsil and District Kanker (CG).

P.R. No. 1398/05
Presented by Shri Vishnu Kashyap
dated 13.05.05

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6. Smt. Jamotin Bai D/o Mem Lal Kalar, aged about 45 years, resident of Village Nara, Tahsil and District Kanker (CG).

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

आदेश पत्रक

मामला क्रमांक SA No. 264 **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	05/09/2005 Shri Vishnu Koshta, Counsel for the appellant. Heard on admission and M.C.P.No.805/2005. Appellant/plaintiff filed a suit for declaration of title over the suit land in the year 1988 averring that the suit land which is situated at village Nara about 13 acres and 20 acres at village Tansi originally belongs to Kripa Ram. Kripa Ram during his life time partitioned the property and on partition the land situated at village Nara have been allotted to the plaintiff who since then is in continuous possession of it. Respondents/defendants No.1 and 2 Nohru and Rameshwari denied the claim on the ground that all the lands were the joint family property of their father Kripa Ram. After the death of Kripa Ram, both the plaintiff and the defendants inherited the property and their names have been recorded in revenue records. In 1978 the lands situated at village Tansi came under "Duban", therefore, the State Government acquired it and paid the compensation of Rs.28,290.27 to plaintiff and defendants and all the three brothers received the said amount by their joint signatures. They are in joint possession of the suit land. On 04/06/1983 their mother Smt. Phulwa Bai convened a meeting for partition and on that day partition between the parties took place.	

देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... SA 264/05 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Defendant No.2 Dhiru Ram did not refute the claim of the plaintiff. Learned Civil Judge, Class I, Kanker, after appreciation of the oral evidence held that plaintiff got the suit land on partition in 1967, and therefore, decreed the suit in his favour. Defendants No.1 and 2 Nohru and Rameshwari preferred an appeal against the judgment and decree passed by the learned Civil Judge, Class I, Kanker. Learned Ist Additional District Judge, Kanker decided the appeal on 08/04/2005. First Appellate Court held that the finding arrived at by the trial Court regarding partition in 1967 is erroneous and after fresh appreciation of the evidence held that no partition in 1967 in the life time of Kripa Ram took place. Therefore, allowed the appeal, set aside the judgment and decree passed by the trial Court on 11/02/1996. Being aggrieved by the judgment and decree dated 08/04/2005 passed by the first appellate Court, second appeal has been preferred by the plaintiff. Admittedly, the lands were recorded in the name of Kripa Ram and after his death the lands were mutated in favour of plaintiff Mem Lal, defendants Nos. 1 and 2 Nohru and Dhiru and their mother Phulwa Bai. As per revenue record, the property continued till 1987 – 1988 in their joint names. From the record and the evidence, it is evident that the lands situated at village Tansi were	

पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... SA 264 ..... **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

acquired by the State Government and the documents transferring the said land have been executed in favour of State Government jointly by the plaintiff under his signature. Compensation has been paid by the State Government. Plaintiff admitted the fact in his statement that on 04/06/1983 a meeting was convened at village Tansi and he and his two brothers were present in the meeting. In that meeting partition of the land at village Tansi and Nara has been made. He also admits that document has been prepared there and he signed the same. Although he says that his signatures were taken forcibly, but willful presence itself contradicts the fact of any pressure or force.

The suit land was recorded in the joint names of all the three brothers, who are plaintiff and defendants. The said property was joint Hindu family property. It is also evident that the joint Hindu family property of all the three brothers situated at village Tansi was acquired by the State Government. In favour of the State Government, the documents have been executed by the plaintiff and his brothers. The plaintiff admits that partition proceeding held on 04/06/1983. All the revenue records support the fact that the suit land was not partitioned in 1967 or nearby but remained joint. Therefore, learned first Appellate Court on due appreciation of the evidence rightly held that in the life time of Kripa Ram no partition took place and the suit land was not allotted to the plaintiff during

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

आदेश पत्रक

मामला क्रमांक ..... SA 264 **सन्** **2005**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the life time of Kripa Ram. Learned first appellate Court did not commit any error in setting aside the judgment and decree passed by the trial Court. Considering all the facts raised in memo of appeal, as well advanced during argument, material and evidence available on record, I am of the opinion that no substantial question of law involves in this appeal. Therefore, the appeal is liable to be dismissed and is accordingly dismissed. In the light of the above order, M.C.P.No.805/2005 and I.A.No.1503/2005 stand disposed of. **Sd/-** **V.K.Shrivastava** **Judge**	